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10/580,524

05/24/2006

Michael James Unwin

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EXAMINER

WEIER, ANTHONY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

04/08/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/580,524 | Applicant(s) UNWIN ET AL. | |
| | Examiner Anthony Weier | Art Unit 1794 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22, 24 and 26-42 is/are pending in the application.
- 4a) Of the above claim(s) 28-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22, 24, 26, 27 and 40-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112, 1st Paragraph

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 22, 24, 26, 27, and 40-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, claims 22 and 42 now disclose storing wine for at least four months. Such recitation extends the scope beyond that supported in the original specification which was 4-36 months. By referring to the open ended "at least four months", Applicant is increasing the scope beyond what was present in the application originally. Likewise, the reference to the capacity being "at least 225 litres" is not supported by the original specification in that only a few capacity values were recited, and there exists no support in the original specification to go beyond these specifically recited amounts.

This is a new matter rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 22 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2357970.

DE 2357970 discloses a process wherein wine is matured in a closed container made of plastic (e.g. polyethylene) wherein oxygen is allowed to permeate the walls of said container to facilitate maturing of the wine. DE 2357970 also discloses fermentation of other beverages including fruit juices from, for example, grapefruit.

The claims call for the capacity of the container and that same is done in bulk, storage time for the wine (or other beverage), and the rate of permeation of oxygen through the walls of the closed container. However, it should be first noted that DE 2357970 discloses producing the beverage on an industrial basis (i.e. in bulk) and also that oxygen may penetrate the plastic film at the speed desired (midway through Example 1) wherein the latter is dependent on the thickness of container used as well as the size of the container itself. Arriving at the particular amount of beverage to be treated would have been obvious to one having ordinary skill in the art as a matter of preference depending on the particular amounts desired or needed. Determining such processing variables as the time for maturation and permeation rate to facilitate a particular desired degree of maturation would have been well within the skill of an artisan, and it would have been further obvious to have arrived at the particular permeation, time of maturation, and oxygen permeation rate through routine experimental optimization.

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4. Claims 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2357970 taken together with Diaz.

The claims further call for a floating barrier member in sliding contact with the container walls that separates the wine from the headspace. Diaz teaches holding wine in a tank wherein a floating disc which is slidably movable along the wall of the tank and provides a barrier between said wine and headspace within the tank (see paragraph 50). It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated same in the container of DE 2357970 for the reasons set forth in Diaz such as, for example, to limit the exposure of wine to oxygen (paragraph 9).

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 2357970 taken together with Diaz and French 2736923.

Claims 27 further calls for the presence of oak staves suspended within the wine container during storage. However, French 2736923 teaches the use of such staves suspended in stored wine for flavoring same. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such flavor modifying element as a matter of preference depending on the particular flavor desired in the final wine product.

Response to Arguments

6. Applicant's arguments and the Flecknoe-Brown Declaration filed 2/2/09 have been fully considered and were persuasive (along with claim amendments) to withdraw the prior applied prior art. However, a new search was necessitated by said claim

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amendment which provided limitations not previously considered. Said search provided the new grounds of rejection as set forth above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
Primary Examiner
Art Unit 1794

/Anthony Weier/
Primary Examiner, Art Unit 1794

Anthony Weier
April 3, 2009